

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFER.

Plaintiffs,

vs.

THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; KEN RAYMOND, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; DAVID C. BLACK, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. ERIC BOYETTE, in his official capacity as TRANSPORTATION SECRETARY; THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; MANDY COHEN, in her official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES,

Defendants.

Civil Action No. 20-cv-457

**DECLARATION OF JO NICHOLAS IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

I, Jo Nicholas, hereby declare as follows:

1. I am a U.S. citizen and a resident of North Carolina. I am a registered voter in Moore County, and have resided in Moore County since 2003.

2. I have served as President of the League of Women Voters of North Carolina (“LWVNC”) since July 2019. In this role, I preside at all meetings of the organization and board of directors and represent the organization to the public at an assembly. In the absence of the treasurer, I may sign or endorse checks, drafts and notes. I am an ex officio member of all committees except the nominating committee, and I manage and supervise the overall organization and perform other duties as may be designated by the Board. I first became involved with the LWVNC in 2011 and since then have served as Past President and Board Director in addition to my current role.

3. The LWVNC is a state affiliate of the League of Women Voters of the United States (“the League”). The League is a nonpartisan, community-based organization that encourages Americans to participate actively in government and the electoral process. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League now has more than 140,000 members and supporters, and is organized in approximately 750 communities and in every state.

4. For over ninety years, the League has led efforts to remove barriers that Americans face in registering to vote and casting a ballot. The League was also deeply involved in crafting the National Voter Registration Act of 1993 (“NVRA”), having provided substantial testimony and input over the course of the NVRA’s legislative history,

specifically on the topic of purges for failure to vote. *See, e.g.*, Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin., 101st Cong. 149 (1989) (testimony of Nancy M. Neuman, President, League of Women Voters); Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin., 103d Cong. 140 (1993) (testimony of Becky Cain, President, League of Women Voters).

5. The L WVNC is a nonpartisan political grassroots organization with seventeen local chapters throughout North Carolina. The L WVNC currently has approximately 1,912 members.

The L WVNC's Work to Help Voters Register

6. The L WVNC conducts voter registration and education initiatives throughout North Carolina, including voter registration drives, distribution of voter education materials, and voting-day assistance to help individuals exercise their right to vote. For example, in the 2016 election cycle, the L WVNC assisted several thousands of voters to register and hundreds of voters to enroll to receive absentee or by-mail ballots. In our Piedmont Triad chapter alone, which operates in Guilford County, we held 46 voter registration events as well as voter registration drives following Naturalization Ceremonies and registered over 550 voters between July 1, 2016 and June 30, 2017. Our other local chapters have engaged in similar efforts.

7. The L WVNC has expended significant resources to conduct these voter registration and education initiatives, including the time and effort of our members. We expect to engage in similar efforts for the upcoming general election cycle, and have

already started our voter education initiatives, releasing a nonpartisan voter guide ahead of the March primary.

8. The COVID-19 pandemic has already significantly hindered the LWVNC's work, requiring us to modify in-person initiatives and meetings to remote platforms. The LWVNC is becoming increasingly concerned that the COVID-19 pandemic is likely to interfere with the upcoming 2020 election, and I anticipate that without additional voter registration and support initiatives we may experience a significantly lower voter turnout. As a result, the LWVNC is currently working on initiatives to facilitate voter registration to mitigate the effects of the COVID-19 pandemic on voter turnout this fall. We expect that many voters will be seeking to register closer to the election because of the limitations on in-person voter registration efforts by LWVNC and similar groups. As a result, we expect many voters will try to register and be unable to do so due to the 25-day registration deadline, and if this deadline remains in force it will have the effect of frustrating our purpose in promoting voter registration. In addition, voters who need to update their registration and were previously able to do so during one-stop voting, including LWVNC members, will now be unable to do so because they are unable to vote in person due to the risk to their health. We will have to devote more resources to make sure voters, including our members, can update their information in time to apply for and vote an absentee ballot.

9. Online voter registration will be particularly important to the LWVNC's registration work given the limits on our in-person initiatives. The North Carolina Department of Motor Vehicle ("DMV") offers online registration, but previously this was

only available to individuals who were also making a “transaction” with DMV. This was recently changed in March 2020 so that voters with a DMV account can register to vote online even if they are not doing an online transaction. Since this function is very new, most voters are not aware that they can use this online feature to safely register to vote. The LWVNC intends to publicize this option, and include this in our online voter services guide, “VOTE411”, within our communities, but we need time to do so. The current requirement that voters register with the DMV at least 25 days before the election will hinder these efforts and require us to devote resources to helping voters register that we would otherwise use in other initiatives leading up to the election.

10. Similarly, the failure of North Carolina to offer any other method of online voter registration, especially for individuals without DMV accounts, will significantly hinder and impact our efforts to conduct voter registration during the COVID-19 pandemic. Many voters we assist do not have DMV accounts and cannot register online currently. We would ordinarily assist citizens without DMV accounts using paper registration forms during our community voter registration activities, but cannot do so during the pandemic. The time needed to educate voters in a format that many are not familiar with – online resources – is crucial and these changes are needed now so that voters can be made aware and register to vote. The absence of an online option frustrates the mission of the LWVNC to ensure that all eligible voters can register safely in the current environment.

The LWVNC's Work to Help North Carolinians Vote By Mail

11. As noted above, the LWVNC engages in voter education through its local chapters and this includes educating voters, including our members, on their options for how to vote. We are developing educational materials for voters to use in order to help them navigate this process, and our members have already started to receive questions about this process. LWVNC is acutely aware that many voters will want to vote absentee by mail this year. We will therefore focus on educating our members and their communities about voting absentee by-mail because it will likely be the safest option for many individuals to exercise their right to vote.

12. We also expect that many of these voters will seek to vote by mail for the first time. A survey of our members indicated that most had either never voted by mail, or had not voted in North Carolina recently by mail. We recognize that significant resources need to be devoted to voter education, and particularly to absentee by mail voting, throughout the state. As a result, helping voters navigate the application process and understand the requirements of voting by mail will be an essential part of our work, including providing them with resources, application forms, and accessible ways to submit forms.

13. Before the enactment of SB 683, LWVNC members assisted voters who needed help with completing and submitting absentee ballot request forms. The new restrictions on what assistance we can provide voters to complete and submit absentee ballot request forms will naturally impair these efforts and limit the types of initiatives we

can undertake to help voters. Specifically, L WVNC and its members are unable to assist voters with correctly completing absentee ballot request forms and will be severely constrained in how we can help voters ensure they have filled these forms out correctly. Given the dramatic increase in voters wishing to vote by mail this year and the number we expect to do so for the first time, helping voters to request absentee ballots is particularly critical to our mission at this time in light of COVID-19. Assisting voters with filling out request forms is an important part of our educational mission and message of participation because once we assist voters with this process for the first time, they are more likely to do so on their own the next time and more likely to vote in the next election. Directly assisting voters is also an essential means of how we build relationships and associate with voters, including our members. In the absence of SB 683, we would be able to associate with our members and other voters to assist them with completing and submitting absentee ballot applications, which would allow us to further associate and build such relationships as a trusted messenger.

14. The L WVNC also views the lack of any method to request absentee ballots by phone, email, or online as problematic. We have already heard from people, including members, who have limited access to a computer and no access to a printer to download the absentee ballot request form. Other options need to be created to allow the many voters who will be looking to vote safely and vote absentee by mail to do so. We are also unable to help voters deliver absentee ballot request forms to the county board of elections, and this step can be particularly difficult for those who are self-quarantining and do not have

access to envelopes, postage, or secure USPS mail pick-up. Developing the kind of relationship where voters trust us to turn in their forms (much like the voter registration assistance we provide) is key to our relationship and association with voters and the purpose of our members in their respective communities. With these restrictions in place, LWVNC will have to redirect a significant amount of its limited resources to helping eligible voters access absentee ballot request forms on their own and are severely limited in the assistance we can provide to help voters actually submit those forms. Helping voters submit forms and ensuring they are delivered to election officials would also make our message of promoting participation and civic engagement more effective. It is less effective and creates less of a relationship with members and other voters to simply point to a blank form and no more.

15. As for the requirement that two witnesses or a notary certify each mail-in ballot, the LWVNC is very concerned that this requirement will seriously affect voting behavior this year. Many LWVNC members fall into the population of voters that need to practice strong social distancing behaviors to protect their health. For these members, getting two witnesses to observe ballot marking and complete the application envelope will be difficult and force them to choose whether to break social distancing guidelines. Additionally, many have stated that this requirement discouraged their voting absentee by mail in the past. If the two witness requirement remains in effect, the LWVNC will have to divert its limited resources towards educating voters on how to vote safely, if even possible, with this restriction in place.

16. Furthermore, we have great respect for all the workers with the U.S. Postal Service, but we recognize that they are likely to be overloaded this year and alternative, safe and secure delivery systems will be required to make absentee by mail voting an effective option for every voter who cannot vote in person. Contactless drop boxes are a safe and secure option for many voters. Without this option, the LWVNC's work to assist voters to vote by mail will be limited because we will have concerns as the election gets closer that mailed absentee ballots may not be postmarked or delivered in time and will have to redirect more of its limited resources towards mitigating this concern.

17. The LWVNC recognizes that many counties make a significant effort to review completed absentee ballot envelopes and flag errors so that voters can offer more information, or have an opportunity to re-do their ballot. This has been observed by League members at many local county board of elections meetings. However, we also are aware that there is no uniform standard that is followed by every county board of elections, and that not all counties undertake these efforts. All voters in North Carolina should have the same opportunity to make sure their ballot is counted in this election. Because so many voters will be submitting absentee by mail ballots for the first time this year, we expect this to be a significant issue.

18. Without uniform and adequate methods for allowing voters to cure absentee ballot application forms or absentee ballots, the LWVNC will have to redirect its limited resources to ensuring that the voters it assists are following all procedures precisely, in addition to its general educational efforts.

The LWVNC's Work to Support In-Person Voting

19. The LWVNC recognizes that North Carolina will need to have a robust in-person voting system in place. Many voters prefer to vote in person. In fact, if we follow the estimates of the State Board of Elections that 40% of voters will opt to vote absentee by mail this election cycle, millions of North Carolina voters will still want to vote in person. For example, people who lack a fixed long-term address, who rely on the ADA-ballot marking devices, or who prefer the security of seeing their ballot enter the tabulator, will still want to go to an in-person polling location.

20. Local county boards of elections must have as much flexibility as possible to operate as many polling sites as possible in what is expected to be a very challenging early voting environment. Local boards of elections will be scrambling to find locations that offer the space to provide social distancing, not only for voters, but for precinct workers. In addition, it is expected that some sites usually available for voting may become unavailable if the proprietors are uncomfortable giving the public broad access to their facilities. Allowing different sites to be open at different times will give more voters access to safe in-person voting options, reducing the possibility of long lines. If the uniform hours requirement remains in place and precincts are consolidated as a result, the LWVNC will have to divert its limited resources in its voter education efforts to alert its members and those in their communities about the changes.

21. As with in-person polling sites, local county boards of election will need flexibility in recruiting workers to staff the polls. COVID-19 has reduced the population of

registered voters who will feel comfortable interacting with large numbers of the public. I understand that Wisconsin had such a crisis during their recent primary, and that they called in their National Guard to staff some precincts where insufficient numbers of poll workers would have prevented some counties and townships from having any polling places. Many LWVNC members work as precinct officials both during early voting and on election day. Some have reported that they will not work this year because of the pandemic. We will work hard to get the word out to the community to find poll workers, but they may no longer be within the precinct. If the requirement that the majority of poll workers must come from a precinct remains in place, the LWVNC will have to redirect more of our additional resources to recruit poll workers, whereas these efforts would be much easier with this restriction lifted.

The Urgency of Preparing for the 2020 General Election

22. The LWVNC recognizes that this will be a unique election and our usual voter education will be under greater constraints. Voters have already communicated to us their concerns and their confusion. In order to effectively undertake our voter education and assistance initiatives, we need the ability *now* to give voters the information and reassurance that they will be able to vote safely in November. It is crucial for us to convey to our members and the voters in their communities that this most critical election will be handled by our government with the professional confidence that other elections have had in North Carolina, and that their votes will be received at their boards of elections and will be counted.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing Declaration is true and correct to the best of my knowledge.

Executed on the 1st day of June, 2020.

Jo Nicholas
JoNicholas